IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1231 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE M.S.SHAH
and
HON'BLE MR.JUSTICE D.A.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

INDIAN RAYON AND INDUSTRIES LTD

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 1231 of 2004
MR TANVISH U BHATT for Petitioner No. 1
MR. SIRAJ GORI, LD AGP for Respondent No. 1-3
RULE SERVED for Respondent No. 3

CORAM : HON'BLE MR.JUSTICE M.S.SHAH
and
HON'BLE MR.JUSTICE D.A.MEHTA

Date of decision: 09/08/2004

ORAL JUDGEMENT

(Per : HON'BLE MR.JUSTICE M.S.SHAH)

The challenge in this petition under Article 226 of the Constitution of India is the impugned communication dated 23-7-2003 (Annexure-C) from the Dy. Sales Tax Commissioner (Divn.VI) Bhavnagar, and the communication dated 5-11-2003 from Sales Tax Officer (1) Veraval communicating the Dy. Commissioner's decision by which the Dy. Commissioner has rejected the petitioner's application dated 27-11-2002 for waiver of interest under the Sales Tax Interest Waiver Plan (Amnesty Scheme) 2002 as set out and published along with the circular dated 22-4-2002 (Annexure-A to the petition).

2. Mr. Tanvish Bhatt, learned counsel for the petitioner submits that, apart from the fact that the impugned communications do not disclose any reason for rejecting the petitioner's application, the grounds given by the Sales Tax Officer, Veraval in the reply affidavit for rejecting the application militate against the very object of the Amnesty Scheme. It is submitted that the interpretation given by respondents No.2 and 3 (Sales Tax Officer, Veraval and Dy. Commissioner, Sales Tax, Bhavnagar) gives premium to the assessees who did not pay tax interest and penalty and discriminates against the assessee like the petitioner who had paid more amount than the amount of sales tax payable and only a part of the interest/penalty liability remains outstanding. In the facts of the case the petitioner had paid an amount of Rs.2,19,54,262-00 as against the tax demand of Rs.2,00,71,379-00 and against the interest & penalty to the tune of Rs.21,23,542-00.

3. Without going into the merits of the controversy it appears to us that when the Amnesty Scheme was announced by the Sales Tax Commissioner and the question of interpretation of the relevant provisions of the Scheme has come up, it would be in the fitness of things if the petitioner makes a representation to the Sales Tax Commissioner to look into the matter, because the provisions of the said scheme are required to be interpreted consistent with the object of the Scheme. If the subordinate officers have not appreciated such object, it would be just and proper for the Commissioner to give appropriate relief, if the facts of the case so demand.

4. For the aforesaid reasons, we dispose of this petition with a direction that if the petitioner makes a

representation to the Sales Tax Commissioner on the subject matter of this petition by 31st August, 2004, the Sales Tax Commissioner shall consider and decide the same as expeditiously as possible, and preferably within two months from the date of receipt of the representation.

5. The petition is disposed of accordingly. Rule is discharged. No order as to costs.

Dt: 9-8-2004 (M.S. SHAH, J)

(D.A. MEHTA, J)

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